

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

B.W.,)
)
Plaintiff,)
)
vs.) Case No. 4:18-CV-1025 HEA
)
CITY OF ST. LOUIS, MISSOURI, et al.,)
)
Defendants.)

**PLAINTIFF'S MOTION FOR TAXATION OF COSTS OF SERVICE TO BE ASSESSED
AGAINST DEFENDANT JOHN STEWART AND FOR ATTORNEY'S FEES**

COMES NOW Plaintiff B.W. ("Plaintiff"), by and through her attorney, and for her Motion for Taxation of Costs of Service to be Assessed Against Defendant John Stewart ("Defendant Stewart") and for Attorney's Fees and respectfully states to this Honorable Court the following:

1. On Monday, June 25, 2018, Plaintiff's undersigned counsel filed the above-captioned case.
2. Also, on Monday, June 25, 2018, Plaintiff's undersigned counsel mailed to Defendant Stewart¹ the Notice of Lawsuit and Request to Waive Service of a Summons (*See Doc. #1-3, Doc. #1-4 and Doc. #1-5*), two (2) copies of the Waiver of the Service of Summons, a copy of the Complaint filed in this case (Doc. #1) and a self-addressed, stamped envelope.
3. The Waiver of the Service of Summons was due to be executed by Defendant Stewart and returned to the undersigned by July 25, 2018.
4. The Waiver of Service was not executed by Defendant Stewart or delivered to the undersigned by July 25, 2018.

¹ Defendant John Stewart's Notice of Lawsuit and Request to Waive Service of a Summons, 2 copies of the Waiver and SASE were mailed to his residence (*See Doc. #1-4*).

5. On August 10, 2018, after Defendant Stewart failed to return a signed waiver of service, Plaintiff requested an alias summons for Defendant Stewart. (*See Doc. #5*).

6. Personal service costs on Defendant Stewart amounted to \$70.00. (*See Plaintiff's Exhibit 1 attached hereto*).

7. Rule 4(d)(2) of the Federal Rules of Civil Procedure provides that:

"If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court **must** impose on the defendant:

- (A) the expenses later incurred in making service; and
- (B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses."

Fed.R.Civ.P. 4(d)(2). (*emphasis added*).

8. In addition to the aforementioned service costs incurred, Plaintiff has also incurred attorney's fees as and for the preparation of this motion and memorandum in support filed concurrently herewith.

9. Specifically, the undersigned has expended 2.1 hours in the preparation and filing of this instant Motion and attached exhibit.

10. Additionally, the undersigned has expended 0.5 hours in the preparation and filing of Plaintiff's Memorandum in Support filed concurrently herewith.

11. Plaintiff's undersigned counsel makes contemporaneous records on his hours worked on this case and every case.

12. Plaintiff's undersigned counsel records his time in tenths of hours; that is, every 6 minutes is recorded as 1/10 of an hour.

13. Plaintiff's undersigned counsel:

- (a) is an attorney licensed to practice law in the State of Missouri, State of New York, this Federal District Court for the Eastern District of Missouri, the Federal District Court for the Southern District of Illinois, the Federal District Court for the Northern District of Indiana, the Federal District Court for the Western District of Missouri, the 2nd Circuit Court of Appeals, the 7th Circuit Court of Appeals, the 8th Circuit Court of Appeals and the Supreme Court of the United States; and
- (b) has been practicing law for over 18 years, focusing mostly on federal civil rights and criminal defense.

14. On February 27, 2015, the Honorable Judge Carol E. Jackson, now retired, then sitting in this court, in ruling on an identical motion as this motion, found the undersigned's rate at that time, \$300.00/hour, reasonable on a civil rights case. (*See Plaintiff's Exhibit 2 attached hereto*).

15. On July 17, 2018 the Hon. Chief Magistrate Judge Nannette A. Baker found \$400.00/hour, reasonable on a civil rights case entering a Memorandum and Order granting a similar motion. (*See Plaintiff's Exhibit 3 attached hereto*).

16. Plaintiff's undersigned counsel's current rate on civil rights cases is \$400.00/hour and the undersigned respectfully states that this fee is reasonable.

17. Thus, Plaintiff seeks service costs and attorney fees in the amount of \$70.00 for costs of service; in the amount of \$840.00 as for 2.1 hours expended on this motion and \$280.00 as for 0.7 hours expended on the memorandum in support, filed concurrently herewith, for a total of \$1,190.00.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests this Honorable Court to grant her Motion for Taxation of Costs of Service to be Assessed Against Defendant John Stewart and for Attorney's Fees and for such other relief this Court deems just and proper under the circumstances.

Respectfully submitted,

SCHOTTEL & ASSOCIATES, P.C.

BY: s/James W. Schottel, Jr.

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Attorney for Plaintiff
B.W.

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2018, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Erin K. McGowan
mcgowane@stlouis-mo.gov

Attorney for Defendant
City of St. Louis, Missouri

I further certify that a copy of the foregoing with attached exhibits were mailed, postage prepaid to the following on this _____ day of August, 2018:

John Stewart
38 Snowmass Ct.
O'Fallon, MO 63368

Defendant, John Stewart

s/*James W. Schottel, Jr.*